



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 CHURCH STREET  
L & C ANNEX 6TH FLOOR  
NASHVILLE TN 37243-1534

 **FILE**

June 25, 2007

Duntreath Partners  
Mr. David Gribble  
6745 Lenox Center Court, Suite 100  
Memphis, Tennessee 38115

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**RECEIPT #7004 2510 0002 4678 0835**

White Contracting, Inc.  
Ms. Melody White  
9408 Macon Road  
Cordova, Tennessee 38016

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**RECEIPT #7004 2510 0002 4678 0842**

Subject: DUNTREATH PARTNERS AND WHITE CONTRACTING, INC.  
DIRECTOR'S ORDER 07-094  
SHELBY COUNTY, TENNESSEE

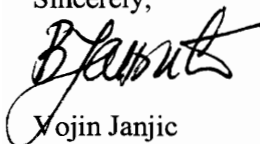
Dear Mr. Gribble and Ms. White:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, please contact Jessica Murphy at (615) 532-0676 or you may contact me at (615) 532-0670.

Sincerely,



Vojin Janjic  
Manager, Enforcement and Compliance Section

VJ:EJM

cc: WPC-EFO-M  
WPC-NCO-E&C

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF WATER</b>
	)	<b>POLLUTION CONTROL</b>
<b>DUNTREATH PARTNERS</b>	)	
	)	
<b>AND</b>	)	
	)	
<b>WHITE CONTRACTING, INC.</b>	)	
	)	
<b>RESPONDENTS</b>	)	<b>CASE NO. 07-094</b>
	)	
	)	
	)	

**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "division") by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "department").

**II.**

Duntreath Partners, (hereinafter the "Respondent Duntreath") is the developer of Enclave Planned Development Phase 3 & 4 (hereinafter the "site") located at the

intersection of Wolf River Boulevard and Forest Hill Irene in Shelby County, Tennessee. Service of process may be made on Respondent Duntreath through Mr. David Gribble, at 6745 Lenox Center Court, Suite 100, Memphis, Tennessee 38115.

### III.

White Contracting, Inc., (hereinafter the "Respondent White") is employed by Respondent Duntreath as the primary contractor at the site. Service of process may be made on Respondent White through Melody A. White located at 9408 Macon Road, Cordova, Tennessee 38016.

### JURISDICTION

### IV.

Whenever the commissioner has reason to believe that a violation of the Water Quality Control Act of 1977 (hereinafter the "Act"), Tennessee Code Annotated (T.C.A.) § 69-3-101 et seq, has occurred or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as Chapters 1200-4-3-4 of the *Official Compilation: Rules and Regulations of the State of*

*Tennessee.* Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director of the division any of the powers, duties, and responsibilities of the commissioner under the Act.

## V.

The Respondents are "persons" as defined by T.C.A. § 69-3-103(20) and, as herein described, have violated the Act.

## VI.

Wolf River, an associated wetland, and the unnamed tributaries thereto, referred to herein, are "waters of the state" as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. In accordance with Department Rule 1200-4-4, "Use Classifications for Surface Waters," these water bodies have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife. In addition, the receiving waters have been classified as impaired waters due to siltation.

## VII.

T.C.A. § 69-3-108 requires a person to obtain coverage under permit prior to discharging any substance to waters of the state, or to a location from which it is likely that the discharged substance will move into waters. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (hereinafter the

“TNCGP” or “permit”) may be obtained by submittal of a complete and accurate Notice of Intent (NOI).

### **VIII.**

T.C.A. § 69-3-108 requires a person to obtain a permit from the department prior to the alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state. Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss.

### **FACTS**

### **IX.**

On December 15, 2004, division personnel received a Notice of Intent (NOI), site map, and storm water pollution prevention plan (SWPPP) from the Respondents, along with the application fee. The NOI was for a residential development known as Enclave Planned Development Phase 3 & 4. David Gribble was listed on the NOI as the owner/developer of the site and White Construction, Inc. was listed as the primary contractor. Upon review of the documents submitted, division personnel noted several deficiencies including: failure to submit the appropriate fee and failure to indicate

placement of sediment basins and/or sediment traps in the SWPPP as required by the TNCGP.

**X.**

On December 21, 2004, division personnel sent Respondent Duntreath a letter notifying him of the deficiencies in his application for coverage under the TNCGP.

**XI.**

On December 28, 2004, division personnel received the completed NOI along with the appropriate application fee and updated SWPPP.

**XII.**

On January 6, 2005, a Notice of Coverage (NOC) under the TNCGP was issued to Respondent Duntreath for planned construction activities at the site. Respondent Duntreath was authorized to discharge storm water associated with construction activities from the site to an unnamed tributary to Wolf River and associated wetlands, in accordance with the terms and conditions set forth in the TNCGP.

**XIII.**

On April 27, 2006, division personnel contacted the City of Germantown about a complaint regarding excessive dust emanating from the site. During the telephone discussion, division personnel learned that numerous complaints regarding excess dust and erosion from the site had been received by the city over the past year. Division personnel asked if the city would like for the state to become involved. City personnel responded that they would welcome assistance from the state but first wanted to contact

the developer and pursue compliance through the city's municipal separate storm sewer system (MS4) permit.

#### **XIV.**

On February 23, 2007, during a MS4 group training event attended by both division personnel and city personnel, inspectors at the training event observed large quantities of sediment west of the site and just north of Lansdown subdivision that had migrated from the site into a possible stream channel. Also, on that same day, division personnel received a complaint alleging sediment from the site was entering a wetland area adjacent to the Wolf River. Division personnel referred the complainant to city officials.

#### **XV.**

On March 5, 2007, division personnel and personnel from the city of Germantown performed a joint complaint investigation at the site. It was observed that erosion prevention and sediment control (EPSC) measures had been installed, but were inadequate and had been poorly maintained. Large amounts of silt and sand, approximately 1-3 feet in depth were observed in a potential wetland area just north of Lansdowne subdivision as well in the channel leading out of the potential wetland area and into the Wolf River. Many of the EPSC measures had been installed incorrectly, and were therefore ineffective. The NOC for construction activities was not posted onsite as required by the permit, nor was a notice posted indicating where the NOC could be located.

## **XVI.**

On March 9, 2007, division personnel met with the Army Corps of Engineers (ACE) on the site to determine if the area north of Lansdowne was a wetland. ACE determined that the area was indeed a wetland.

## **XVII.**

On March 12, 2007, division personnel performed a stream determination on the channel that exits the wetland and flows into the Wolf River. Division personnel determined that the channel was a stream and as such is considered waters of the state.

## **XVIII.**

On April 2, 2007, division personnel performed a follow-up inspection on the site. Site conditions had not improved since the March 5, 2007, inspection. The silt fence on the eastern edge of the property had not been replaced or repaired. The gullies observed during the previous inspection had not been stabilized and appeared larger than on the previous visit. Gullies around the 3 inlets on the western side of the site also appeared to have increased in size. Silt fence had been installed at the bottom of the slope under the pipe that connects the wetland to the excavation area. The southern portion of the site remained unvegetated even though it was not actively being graded.

The receiving stream is listed as being impaired by siltation. The permit requires that a sediment detention basin be installed at all outfalls that drain 5 or more acres to an impaired stream. The SWPPP submitted with the NOI for coverage under the TNCGP stated that sediment detention basins would be installed as part of the control measures, but no basins had been installed at the time of the inspection.

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## **XIX.**

During the course of investigating this matter, the Division incurred damages in the amount of FIVE HUNDRED AND THIRTY-FOUR DOLLARS AND FIFTEEN CENTS (\$534.15).

## **VIOLATIONS**

## **XX.**

By conducting activities without coverage under a permit, the Respondent has violated T.C.A. §§ 69-3-108(a)(b) and 69-3-114(b).

§ 69-3-108 states, in part:

- (a) Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.
- (b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:
  - (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
  - (3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;
  - (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological,

- biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (5) The construction or use of any new outlet for the discharge of any wastes into the waters of the state;
  - (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

§ 69-3-114(b) states:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

## **XXI.**

By failing to comply with permits referenced herein, the Respondents have violated T.C.A. § 69-3-108 (b) and § 69-3-114(b), referenced above.

## **XXII.**

By causing a condition of pollution, the Respondents have violated T.C.A. § 69-3-114(a).

§ 69-3-114(a):

It is unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in § 69-2-103(22), unless such discharge shall be due to an unavoidable

accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

### **ORDER AND ASSESSMENT**

#### **XXIII.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-107, 109, 115-16, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondents:

- 1) As soon as possible, but no later than 14 days of receipt of this Order, the Respondents shall implement appropriate erosion prevention and sediment control measures designed by a professional engineer or other qualified professional to ensure that no additional material leaves the site and enters waters of the state. The Respondents must notify the division in writing and provide photographic documentation that the erosion prevention and sediment control measures have been installed. This documentation shall be submitted to the Division of Water Pollution Control Manager located at the Memphis Environmental Field Office, Suite E-645 Perimeter Park, 2510 Mt. Moriah Road, Memphis, Tennessee 38115-1520, and a copy of each shall also be mailed to the Manager of the Enforcement & Compliance Section, Division of Water Pollution Control, located on the 6<sup>th</sup> Floor of the L&C Annex, at 401 Church Street, Nashville, TN 37243.
- 2) No further disturbance of this site is authorized until implementation of the erosion prevention and sediment control measures required by Item 1, above has

been completed. Upon completing installation of erosion prevention and sediment control measures, the Respondents shall contact the division and arrange for an on-site review of the control measures. A report including design considerations and rationale for selected techniques and control measures shall be provided to the division by the design professional at the on-site review. No further disturbance of this site is authorized until such time the division has conducted said on-site review.

- 3) The Respondents shall maintain appropriate erosion prevention and sediment control measures to ensure that no additional material leaves the site and enters waters of the state. These professionally designed control measures shall be maintained until final grade and erosion preventive permanent cover are established. Photographic documentation shall be sent to the manager of the Memphis EFO and a copy to the manager of the Enforcement & Compliance Section at the addresses listed above.
- 4) The Respondents shall, within 30 days of receipt of this Order, submit for review and approval a restoration plan to assess sediment contribution from construction activities to the Wolf River, its unnamed tributaries, and associated wetland areas, and restoration of those impacted areas. This plan shall, at a minimum, include detailed plans for removing the sediment, stabilization of the stream banks with native vegetation, and a time schedule to identify completion dates for each proposed activity. The Restoration plan shall be submitted to the manager of the

Memphis EFO and a copy to the manager of the Enforcement & Compliance Section at the addresses listed above.

5) The Respondents shall, within 90 days of receipt of approval of the restoration plan, complete all work identified in the approved plan and send in documentation that the restoration has been completed to the manager of the Memphis EFO and a copy to the manager of the Enforcement & Compliance Section at the addresses listed above.

6) The Respondents shall, within 6 months of receipt of this Order, provide documentation of attendance and successful completion of the department's Erosion Prevention and Sediment Control Workshop, for all employees who manage or oversee construction projects, to the manager of the Memphis EFO and a copy to the manager of the Enforcement & Compliance Section at the addresses listed above.

7) The Respondents shall pay a CIVIL PENALTY of NINETY FIVE THOUSAND DOLLARS (\$95,000.00) to the department, hereby assessed, to be paid as follows:

(a) The Respondents shall, within 30 days of receipt of this ORDER AND ASSESSMENT, pay a CIVIL PENALTY in the amount of TWENTY-THREE THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS (\$23,750.00).

- (b) In the event the Respondents fail to comply with ITEM ONE (1) above in a timely manner, the Respondents are ASSESSED a CIVIL PENALTY in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000.00), payable within 30 days of default.
- (c) In the event the Respondents fail to comply with ITEM TWO (2) above in a timely manner, the Respondents are ASSESSED a CIVIL PENALTY in the amount of TEN THOUSAND DOLLARS (\$10,000.00), payable within 30 days of default.
- (d) In the event the Respondents fail to comply with ITEM THREE (3) above in a timely manner, the Respondents are ASSESSED a CIVIL PENALTY in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000.00), payable within 30 days of default.
- (e) In the event the Respondents fail to comply with ITEM FOUR (4) above in a timely manner, the Respondents are ASSESSED a CIVIL PENALTY in the amount of TEN THOUSAND DOLLARS (\$10,000.00), payable within 30 days of default.
- (f) In the event the Respondents fail to comply with ITEM FIVE (5) above in a timely manner, the Respondents are ASSESSED a

CIVIL PENALTY in the amount of FIFTEEN THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$15,250.00), payable within 30 days of default.

(g) In the event the Respondents fail to comply with item SIX above in a timely manner, the Respondents are ASSESSED a CIVIL PENALTY in the amount of SIX THOUSAND DOLLARS (\$6,000.00), payable within 30 days of default.

8. The Respondents are assessed DAMAGES in the amount of FIVE HUNDRED AND THIRTY-FOUR DOLLARS AND FIFTEEN CENTS (\$534.15), which shall be paid to the Department within thirty (30) days from the receipt of this Order.

9. The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The Director may, for good cause shown, extend for a fixed time period, the compliance dates contained within this ORDER. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any

such extension by the Division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the Director of the Division of Water Pollution Control on this 25<sup>th</sup> day of June 2007.

A handwritten signature in black ink, appearing to read "Paul E. Davis", is written over a horizontal line.

PAUL E. DAVIS, P. E.

Director, Division of Water Pollution Control

### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the director at the address below a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment.

If the required written petition is not filed within thirty (30) days of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§ 69-3-109, 115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 et seq of the Uniform Administrative Procedures Act, and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for

representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made to “Treasurer, State of Tennessee” and shall be sent to Enforcement and Compliance Section, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6<sup>th</sup> Floor L & C Annex, 401 Church Street, Nashville, TN 37243-1534. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6<sup>th</sup> Floor L & C Annex, 401 Church Street, Nashville, TN 37243-1534. Include case number (07-094) on all payments and correspondence.